

SENATE BILL 1256

By Reeves

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 7; Title 29; Title 65 and Title 66, relative to
railroad rights-of-way.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 6, is amended by adding
the following as a new part:

65-6-401. Applicability.

This part applies to facilities:

- (1) Located within a railroad right-of-way, whether on public or private property, on or after January 1, 2022; and
- (2) Existing within a railroad right-of-way, whether on public or private property, before January 1, 2022, if written agreements concerning those facilities do not exist, are terminated, or expire.

65-6-402. Part definitions.

As used in this part:

- (1) "Department" means the department of transportation;
- (2) "Direct expenses":
 - (A) Includes:
 - (i) The cost of inspecting the crossing site before, during, or after construction;
 - (ii) Administrative costs, such as the costs of entering the new crossing on the railroad's books, maps, and property records;

(iii) The cost of flagging during construction; and

(iv) Any other costs incurred due to actual construction;

and

(B) Does not include a contribution to profit;

(3) "Facilities" means cables, conduits, wires, pipes, and structures used by a public utility to transmit utility service;

(4) "Public utility":

(A) Means an individual, copartnership, association, corporation, or joint stock company; their lessees, trustees, or receivers appointed by any court; and any utility district or municipality; any of whom own, operate, manage, or control, within the state, any part of a plant or equipment, for the production, transmission, delivery, or furnishing of telecommunications, cable, heat, light, water, or power either directly or indirectly to or for the public;

(B) Does not include:

(i) A cooperative association organized for the purpose of producing or furnishing heat, light, power, or water to its members only;

(ii) A holding company, unless the holding company furnishes, directly to the public, telecommunications or sewer service, heat, light, water, or power, or natural gas by means of pipes or mains;

(iii) A company that owns, operates, manages, or controls a telecommunications provider unless the company furnishes,

directly to the public, telecommunications or sewer service, heat, light, water, or power, or natural gas by means of pipes or mains;

(iv) A commercial mobile radio service provider;

(v) A joint local water authority; and

(vi) A person that owns an electric generating facility or improvement to an electric generating facility that is subject to a leased generation contract, unless the person furnishes, directly to the public, telecommunications or sewer service, heat, light, water, or power, or natural gas by means of pipes or mains;

(5) "Railroad" means all corporations, companies, individuals, or associations, or their lessees, trustees or receivers, that own, operate, manage, or control any railroad or part of a railroad as a common carrier in this state, or cars, or other equipment used on the railroad, or bridges, terminals or sidetracks, used in connection with the railroad, whether owned by the railroad or otherwise;

(6) "Special circumstances":

(A) Means unique characteristics of a parcel of property that enhance its value above that of a typical parcel of railroad right-of-way; and

(B) Includes the parcel's relationship to other property, the existence of unique topography or natural resources, or other unusual characteristics; and

(7) "Within" means across, intersecting, on, over, perpendicular to, or under.

65-6-403. Compensation.

(a) Unless otherwise agreed to by the parties and subject to subsections (b) and (c), a public utility that locates its facilities within the right-of-way of a railroad shall compensate the railroad five hundred dollars (\$500) for each crossing. The payment must be a one-time payment, in lieu of any license fees, to reimburse the railroad for expenses incurred by the railroad as a result of the construction of the facilities and, in the case of a private crossing, to compensate the railroad for the locating of the facilities within the right-of-way.

(b) A railroad may petition the department for compensation greater than the amount under subsection (a) if the railroad and the public utility cannot agree on compensation and the railroad incurs extraordinary direct expenses as a result of the construction of the facilities or believes that special circumstances exist. If a petition is filed, then the department must determine whether extraordinary direct expenses are incurred or whether special circumstances exist and the amount of compensation to be paid to the railroad.

(c) If grade crossing markings or signs are damaged during construction, then the party responsible for the damage shall pay the replacement costs, unless otherwise agreed to by the parties.

65-6-404. Casing.

A railroad shall not require a gas public utility to encase any steel pipeline facilities installed within the railroad's right-of-way. A gas public utility shall determine whether and how its facilities should be cased and shall comply with all applicable state and federal pipeline safety rules and regulations.

65-6-405. Insurance.

Unless otherwise agreed to by the parties:

(1) A railroad and a public utility shall each determine for itself the amount and scope of insurance the entity must carry to cover risks associated with the property of the railroad or the facilities of the utility within a railroad right-of-way.

(2) A railroad and a public utility shall each indemnify the other entity for damages resulting from the entity's own negligence related to the presence of utility facilities within the railroad right-of-way.

65-6-406. Notification of construction; emergencies; repair; and maintenance.

(a) Unless otherwise agreed to by the parties, a railroad or public utility shall, at the entity's sole expense, notify the other entity of emergencies, planned repair, and construction, or similar operations, within a railroad right-of-way if the operation may affect the other entity. Except for emergencies, initial notification of intent to construct must be made not less than twenty-one (21) calendar days before construction begins, and notification of actual construction must be made not less than three (3) business days before construction begins.

(b) Unless otherwise agreed to by the parties, a railroad or public utility shall establish, at the entity's sole expense, a mechanism for receiving notification of emergencies twenty-four (24) hours per day, seven (7) days per week. For every public utility facility located within a railroad right-of-way, each entity shall inform the other of an emergency telephone number, the name of a person responsible for processing the notification, and any other information necessary for dealing with an emergency situation.

(c) Unless otherwise agreed to by the parties, a railroad or public utility shall each repair and maintain the entity's own property or facilities located within a railroad

right-of-way and shall not perform regular or emergency maintenance or repair of the other entity's property or facilities.

(d) Unless otherwise agreed to by the parties, a public utility shall relocate its facilities within a railroad right-of-way if the relocation is reasonably necessary for railroad operations. The public utility shall pay the relocation expenses unless the facilities to be relocated serve only the railroad.

(e) In meeting notification and response responsibilities under this section, a railroad or public utility shall comply with applicable state law, federal law, and orders and rules of the department.

65-6-407. Emergencies, reimbursement.

Unless otherwise agreed to by the parties:

(1) A railroad or public utility shall each reimburse the other entity for expenses reasonably incurred that result from emergencies caused by the property or facilities of each entity that are located within the railroad right-of-way.

(2) A railroad or public utility shall each reimburse the other entity for reasonable miscellaneous expenses incurred by the other entity upon the other entity's written request.

65-6-408. Physical description of facilities.

(a) Upon placement of new facilities within a railroad right-of-way, a public utility shall, at its sole expense, provide the railroad with a physical description of those new facilities. The description must include the installed location and depth of any underground facilities.

(b) A public utility or railroad shall each provide the other entity with a physical description of any alterations or additions to the entity's property or facilities located within the railroad right-of-way in the area of the public utility's facilities.

65-6-409. Removal of facilities.

Public utility facilities may remain in a railroad right-of-way unless the department approves abandonment of the facilities and orders the public utility to remove the abandoned facilities.

65-6-410. Disputes.

(a) Unless otherwise agreed to by the parties:

(1) A railroad shall not refuse to permit a public utility to construct facilities within a right-of-way solely because of a dispute between the parties concerning compensation for or conditions to the right of placing the facilities within the railroad right-of-way; and

(2) Subject to subsection (b), a public utility may proceed with construction while the dispute is resolved under § 65-6-403(b) or another method mutually selected by the parties.

(b) If a public utility constructs facilities within a railroad right-of-way while a dispute is pending and, after notice and hearing, the department determines that the facilities are located in an unreasonable location or constructed in an unsafe manner, then the department may order the public utility to remove or modify the facilities at the public utility's sole expense.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee code commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. The department of transportation is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022, the public welfare requiring it.